

33. The Defiance Campaign succeeded in arousing the political consciousness of the non-white people as never before. Frustrated by ruthless oppression and unbearable conditions, people from all walks of life rallied to the call of action. It brought sharply to the fore the grievances of the Non-Europeans and compelled all the sections of the people of South Africa to focus their attention on the basic problems of the country. When the lights of liberty were being extinguished one by one, this movement of the African and Indian Congresses remained a beacon in the storm. When the so-called and self-styled defenders of democracy were abandoning the forts of freedom and succumbing to the fascist onslaughts of Malan, this mass action of the Congresses stood out as the only bulwark of hope.

34. Far-seeing men among the Europeans realised that if the ever-widening gulf between the whites and non-whites is not bridged it would do incalculable harm to the future of South Africa. They supported the Campaign and expressed their desire to resolve the deadlock. The various reactions of the Europeans may be summarised as follows:

- (i) Individuals were moved to reconsider the question of relationship between the whites and non-whites, supported the demand for the repeal of unjust laws and advocated concessions to Non-Europeans. These people include philosophers, liberals, university professors and other prominent persons among them.
- (ii) The Civil Rights League, the S. A. Institute of Race Relations, the Torch Commando and other similar organisations declared their concern over the plight of the non-whites.
- (iii) Commerce, trade and industry show grave concern about the situation and propagated liberal and more humane policy towards the Non-Europeans.
- (iv) The Campaign constituted a challenge to Christian conscience and the churches were materially affected, consequently the most important churches took serious note and pressed for the resolution of the impasse from pulpit and platform.
- (v) A group of Europeans under the leadership of Mr. Patrick Duncan, the son of a former Governor-General of South Africa, directly participated in the Campaign during December, 1952.
- (vi) One of the most outstanding reactions was the establishment of the South African Congress of Democrats, an organisation of the Europeans, which stands for equal rights for all, regardless of race or colour. This organisation was established as the result of a call made by the National Action Committee of the African National Congress and the South African Indian Congress.

35. The United Party, through its leader, Mr. J.G.N. Strauss, in condemning the Defiance Campaign, announced the following four-point Non-European policy:

- (a) Social separation with proper separate facilities for all,
- (b) No miscegenation,
- (c) Residential separation, and
- (d) Application of the work and efforts of the Non-Europeans for the benefit of the community as a whole - "on our farms, in our kitchens, in our factories and on our mines".

Fundamentally there was no difference between the United Party and the Nationalist Party on the Defiance issue. The S. A. Labour Party "viewed the campaign with grave concern" and was not prepared to condemn it without qualification. It suggested consultation with the representatives

of the Non-Europeans and the examination of the unjust laws.

36. The Campaign evoked a tremendous response beyond our borders.

Support came from influential and important organisations throughout the world. The racial policies of the Union Government received the consideration of the General Assembly of the United Nations and the overwhelming majority of the member-states supported and adopted a resolution setting up a three-man fact-finding Commission on the issue. The South African Government disregarded the resolution of the United Nations and refused the Commission of Inquiry to visit South Africa.

37. The Government allowed the Campaign to develop in the early stages and adopted a policy of "wait and see". It believed that the Campaign would not arouse popular response as it thought that the masses would remain apathetic. When this was proved otherwise the Minister of Justice declared that he would introduce new legislation to meet the situation. The following are significant reactions on the part of the Government:

- (a) The Minister of Justice tried to link up the Campaign with violence and incited the police to abandon all restraint in its dealing with the public. (See Annexure "A 5")
- (b) Volunteers were harshly treated and beaten up in prisons.
- (c) Riots were provoked at New Brighton through police shooting. Subsequently a "shooting order" was issued to the police by the Minister and it resulted in loss of innocent lives at Denver, Kimberley and East London. (See Annexure "A 6")
- (d) Fruitless efforts were made to link up the Defiance Campaign with Mau Mau.
- (e) 37 Leaders were arrested in the different parts of the country and charged under the Suppression of Communism Act. The judgment in the trial of 20 Leaders in Johannesburg is illuminating. It clearly establishes the fact that the Act has nothing to do with "Communism" as such. It is an instrument of suppressing the liberties of the people. See Annexure "A 7" for the Judgement and Annexure "A 8" for the indictment.
- (f) Restrictions were imposed on the freedom of assembly and movement of the leaders throughout the country, meetings were banned and the offices of the Congress were raided.
- (g) Bogus organisations such as the non-existent Bantu National Congress, the Supreme Council, the Kleurlingsbond and the South African Indian Organisation were placated to accept the Government policy of apartheid.
- (h) The Public Safety Act and the Criminal Laws Amendment Act, giving wide powers of dictatorship to the Government, were passed, ostensibly as anti-defiance measures.

38. The Government fostered a policy of divide and rule. It provoked violence in order to create disorder. But it failed to bring about chaos in the ranks of the liberation movement and was unable to achieve its aims of:

- (a) dividing the Europeans against the Non-Europeans so as to drive them into the hands of the Nationalists,
- (b) dividing the Non-Europeans amongst themselves so as to weaken them, and
- (c) using the resulting situation for thrusting absolute fascist dictatorship.

The Defiance Campaign:

- (a) revolutionised the outlook of the non-white people on a mass scale and instilled the spirit of defiance in them;
- (b) established the African and Indian Congresses as the true spokesmen of the aims of the majority of the people of South Africa;
- (c) focussed the attention of all sections of our people - and indeed the whole world - on the basic problems of the country;
- (d) challenged the perpetuation of racial discrimination and white "baaskap"; and
- (e) opened the way for democratic advance for all the people of South Africa, both white and non-white.

PART THREE

THE CONGRESS OF THE PEOPLE

39. The 41st Conference of the African National Congress, held at Queenstown, took the momentous decision of convening a Congress of the People of South Africa. Its resolution elicited the co-operation of the South African Indian Congress, South African Congress of Democrats and the South African Coloured Peoples Organisation, to jointly convene this great assembly of the people of South Africa to draw up a Freedom Charter. In terms of the above decision the South African Indian Congress was invited to participate in a joint conference of the executive committees of the above-mentioned organisations. (The letter of invitation, which embodies the relevant resolution, is annexed herewith, marked "B 1", and our reply thereto marked "B 2").
40. The joint conference met on the 21st of April 1954, and discussed the matter fully on the basis of a memorandum submitted to it by the African National Congress. (This is attached herewith, marked Annexure "B 3"). Acceptance of the idea of convoking a convention of all the people of our country - white and non-white - by the leaders of the participating organisations marked a step forward in our struggle for democratic rights in South Africa. The resolution accepting the recommendation of the African National Congress and establishing a sub-committee to draw up a draft plan is attached herewith, marked Annexure "B 4".
41. The Planning Council drew up the plan for the convocation of the Congress of the People and presented it to another Joint Conference of the four organisations, which was held on the 9th of May 1954. The Conference adopted the plan submitted to it by the sub-committee with minor alterations. Extracts from this Plan are attached herewith marked Annexure "B 5". The Freedom Call is also annexed herewith, marked "B 6". These last two documents are commended for the serious study of the delegates.
42. The joint conference further established the National Action Council of the Congress of the People to conduct the campaign. According

to the plan it is desired to obtain maximum support on a national basis and the preliminary work is being done with the view of obtaining the broadest possible representation on the directing body. Provincial and regional organisations have also been set up and the constituent organisations of the South African Indian Congress are expected to carry out their tasks with enthusiasm.

43. For the first time in the history of South Africa, millions of people from all walks of life will be able to participate in the framing of a Charter of their own rights. They will be able to write their demands in it through their elected delegates. As the Freedom Charter must reflect the wishes of the people of our country on a mass basis, its success will depend on effective organisation, because, then and then only, will it contain the true expression of all the people of South Africa. We must take the responsibility of expressing the voice of the Indian people of this country and see that their aims are faithfully expressed in the great Charter of Freedom.

44. The incorporation of the peoples' demands in the Charter will create a historic document. We are certain that the people will proclaim their right to equality in all spheres of life, will demand fundamental freedoms, will reject conditions that affect them adversely. The aspirations of the people will be in conflict with the existing state of affairs in our country. But these demands, which will come from the people themselves, will be of signal importance to South Africa. They will guide us forward in our struggle for a better and a happier life.

#### PART FOUR

##### THE GROUP AREAS ACT

45. The Land Tenure Board, a quasi-judicial body set up under the Group Areas Act, has made a thorough survey of ownership and occupation of land by members of the different groups that inhabit South Africa. The Board has held public meetings for the purpose of considering the desirability or otherwise of establishing group areas, at Lydenburg, Balfour, Wolmaransstad, Carolina, Nylstroom and Brits in the Transvaal; at Durban, Dundee, Glencoe and Pietermaritzburg in Natal; and, at Cape Town, Port Elizabeth, Kimberley, Aliwal North and Burghersdorp in the Cape. In addition, the administrative section of the Land Tenure Department has called for proposals for group areas at Johannesburg, Ladysmith, Pinetown, Louis Trichardt, White River, Witbank, Zeerust, Rustenburg, Koster, Ventersdorp, East London and other places.

46. In terms of the decision of the Executive Committee of the South African Indian Congress, the Provincial Congresses made representations at the meetings of the Land Tenure Board to oppose and expose the Group Areas Act. Evidence submitted to the Board disclosed the true aims of apartheid. All plans for segregation, particularly those affecting the Indians, showed a callous desire on the part of the upholders of apartheid to rob the Indians of the property rights and other economic interests they possess. In all cases the plans involve uprooting of settled populations and the destruction of their means of livelihood. Nationalist-inspired individuals and organisations have used the meetings of the Board for the purpose of fomenting race hatred against the Indians. These meetings, sanctioned by the law, are instrumental in provoking racial hostility, the responsibility for which must rest on the shoulders of Dr. Malan, who acclaimed the Group Areas Act as "the essence of apartheid".

47. Although the Group Areas Act is based on the principle of rule by proclamations it has not succeeded in making any speedy headway. The opposition of the Non-Europeans, particularly of the Congresses, has bogged down the work of the Board. Legal defence has shown that Nationalist dictatorship cannot yet have its unchallenged say in the present set-up of South Africa, which, to some extent, still gives the people the protection of the rule of law. The Department of the Interior, faced with this difficulty and over-anxious to carry out segregation, successfully placated the South African Indian Organisation to succumb and co-operate on the policy of apartheid. The South African Indian Organisation, which represents only a small number of selfish individuals who are interested in preserving their own interests at the expense of the Community, to their utter shame, broke the united stand of the Indian people against the Group Areas Act. (Please refer to a statement issued by the Congress, attached herewith marked Annexure "D 1").

48. The Minister of the Interior made an effort in 1952 to remedy the "deficiencies" found in the "smooth running" of the Act by introducing amendments, but these proved to be unsatisfactory and, therefore, he is considering further amendments. In the meantime, the Land Tenure Board, because of its impatience at the slow progress of effecting segregation, unlawfully and highhandedly prevented the Congresses from participating in the sittings of the Board, first at Lydenburg and then at Pietermaritzburg. This refusal to allow Congress representation indicates the length to which the Department is prepared to go in riding rough-shod over the rights of the people.

49. The trend of events show that the Government is prepared to carry out its aim of apartheid regardless of consequences. This is manifested by the ruthless action in the Western Areas of Johannesburg, which proposes to uproot and deport thousands of Non-Europeans, including 5,000 Indians, in terms of the Native Resettlement Act. The Act gives absolute dictatorial powers to the Minister of Native Affairs over the lives of hundreds of thousands of people; provides for the expropriation and forcible sale of properties and homes; its provisions enable him to throw the people out on open veld, there to live in misery and at the mercy of authorities.

50. Under the circumstances, the Indian Community must consistently oppose the application of the Group Areas Act, with all the means at its disposal. The Congresses must appear before the Board, and if prevented, take recourse to legal action in defence of their rights. Public opinion must be mobilised and people thoroughly educated in accordance with the laid-down policy of the Congress. Persons co-operating with the Board in implementing the Group Areas Act, directly or indirectly, must be exposed. The people must be prepared for all eventualities and mobilised throughout the country on the Western Areas issue. Effective opposition on this question can turn the tide of apartheid and force the Government to retreat.

PART FIVE

OTHER ISSUES

51. During our term of office the Congress has taken up many important issues from time to time; among them, the following are enumerated below:

(a) United Nations.

The African National Congress and the South African Indian Congress jointly submitted a memorandum to the U.N. Commission of Inquiry into the question of race conflict in South Africa, set up in terms of a resolution of the U. N. General Assembly, annexed herewith, marked Annexure "C I". The joint memorandum is also attached herewith in the annexures, marked "U. N. Memorandum."

52. The UN. Commission of Inquiry prepared an exhaustive report on the racial situation in South Africa in an objective manner. Despite the obstacles placed in its way by the Union Government the Commission succeeded in accurately understanding the main features of the racial situation in our country. In particular, within a remarkably short period, it assembled and lucidly presented penetrating summaries of the basic facts of South African history, geography and demography. It accurately outlined the legal and social difficulties of the African, Coloured and Indian people, and traced their effects on the lives of these people. We consider the publication of this report to be an historic event, clearly the fruit of intensive study and objective evaluation of the facts and of international law. The report authoritatively established a number of highly significant conclusions, a summary of which, in the language of the Commission itself, is attached herewith, marked Annexure "C 2".

53. The report was discussed by the last session of the U. N. General Assembly which noted that: "It is highly unlikely, and indeed improbable, that the policy of "Apartheid" will ever be willingly accepted by the masses subjected to discrimination", the "continuance of this policy would make peaceful solutions increasingly difficult and endanger friendly relations among nations". The Assembly requested the Commission to continue its study of the development of the racial situation in South Africa with reference to various implications and to suggest measures which would help to alleviate the situation and promote a peaceful settlement. This resolution is annexed herewith marked Annexure "C 3".

54. The question will, therefore, again be discussed at the next session of the General Assembly of the United Nations in the light of recommendations made by the Commission of Inquiry. The Congress made application for necessary representation in the matter. A letter to this effect is annexed herewith, marked Annexure "C 4" and the reply of the Commission, marked Annexure "C 5".

55. During the term of our office two further resolutions were passed by the General Assembly of the United Nations on the question of the treatment of South Africans of Indian origin. These are attached herewith, marked Annexures "C 6" and "C 7" respectively.

56(b) Pan African Conference.

The African National Congress had initiated a move to hold a Pan African Conference for the purpose of bringing about better co-operation between the peoples of this continent in their common struggle. The original invitation evoked a tremendous response and preliminary arrangements were made for the holding of regional conferences prior to the holding of the actual conference. Of a number of such regional Conferences proposed only one in the Western region of Africa was successfully held. In other regions, due to the hostile attitude of the Colonial powers, it was not possible to hold such regional conferences.

57. The Regional Conference of the Southern Region, which was comprised of the Union of South Africa, South West Africa, Bechuanaland, Basutoland, Swaziland, Kenya, Tanganyika, Uganda, Zanzibar, Southern Rhodesia, Nyassaland and Northern Rhodesia, was scheduled to meet at Lusaka in December 1953. The Conference met, but without delegates from the different territories, as they were prevented from leaving their own countries. Certain delegates, who managed to reach Lusaka in time, were declared prohibited immigrants by the Government of Northern Rhodesia and thus forced to leave the country. As our delegates were not able to leave South Africa, the African National Congress and the South African Indian Congress forwarded a joint memorandum to the Conference, which reached there in time. This memorandum placed our views on the matter and is attached herewith marked Annexure "D 2".

58. (c) Coloured Franchise.

In spite of previous defeats on the matter, the Government again brought forward the question of the Coloured Vote before the Joint Sitting of both the Houses of Parliament. The matter was referred to a Select Committee and the African National Congress and the South African Indian Congress submitted a joint memorandum on the issue and requested an opportunity to substantiate its case by means of oral evidence. This memorandum is attached herewith marked, Annexure "D 4". Although the Congresses were not called to give evidence, the Government was again defeated.

59. (d) Immigrants Regulation Amendment Act.

The above Act was passed by the Government in the face of the united opposition of the people. It has the following effects:

- (i) South African males of Indian or Asian origin, or domiciled in the Union, cannot marry any woman outside the country as he will not be able to bring her into the country.
- (ii) If married prior to 10th February 1953, he must introduce his wife before 9th February 1956.
- (iii) Children born of existing marriages or unions outside South Africa at 10th February 1954, will not be eligible for entry into the country.

The Congress did everything to assist the affected people who were threatened with consequences, arising from the administrative action of the Department of the Interior. Due to representations made by the Congress wives were able to join their husbands in spite of difficulties placed in their way by the immigration authorities.

60. (e) The Western Areas of Johannesburg.

This question of vital importance has been the subject of discussion by the four organisations: the African National Congress, the South African Indian Congress, the South African Congress of Democrats and the South African Coloured Peoples Organisation. Plans to oppose the removal of 58,000 persons have been accepted. In pursuance of this the President-General of the African National Congress issued a call for 50,000 volunteers throughout South Africa, to mobilise the opposition of the people. The Congresses will have to give their full time to the issue and meet the forces of reaction with the view of pushing back the onslaughts of apartheid.

PART SIX

ORGANISATIONAL

61. The tasks outlined in the report present a big programme of action. The organisation of the Congress of the People and the mobilisation of Union-wide opposition to the Western Areas Removal Scheme will require great organisational efforts on our part. It is but correct that we should at this stage consider the weaknesses in our organisation. We must face the fact that in spite of repeated attempts we have not succeeded in bringing about the organisation of our people in the Cape; we have not sufficiently met the situation created by the Government in removing our leaders; our trade union movement is weak and we cannot boast of a womens organisation on a Union-wide scale.
62. During 1953, owing to the lull in the movement, disruptive forces were able to show their heads. The opportunists of the South African Indian Organisation are trying to sow dissention in our ranks. We must admit that these people are able to show themselves because of our shortcomings and internal weaknesses. Now that we are calling a halt to inactivities and are embarking on a forward step in which there is a great central task, common to all democrats, we must put our house in order, so that we may be able to contribute our maximum share in the noble struggle for liberty and life.
63. We must see to it that our branches on the provincial level, are effectively reorganised. We must assist the Cape in bringing about a central organisation in the shortest possible time by uniting the various existing ones. We must meet the situation created by the Government by training and selecting new leaders to replace those who are forced out of the struggle. We must enable the participation of workers as leaders in our movement in a greater measure. Our youth, who have been doing valuable work, must be encouraged to strengthen and expand their activities; our women must be organised on a national basis. In the programme that we have outlined, and which we hope this conference will adopt, we see great possibilities of strenthening our organisation.
64. We must establish a central propaganda machinery for the information and guidance of our active workers. Regular bulletins and directives must be issued to our organs and a check must be maintained on the activities on all fronts. In these difficult times of banning and other restrictions we must make greater use of written propaganda. We must support papers such as the "Advance" and "Fighting Talk" which, in the face of financial difficulties, are serving the cause of the liberation movement; we must support them financially and otherwise.
65. Inspired by the justness of our cause, let us go forward in our tasks, armed with dogged determination and unfaltering courage. Let us step out fearlessly on the broad highway of freedom, arm linked in arm and step in step with the Africa, Coloured and European democrats. If the racialists of South Africa have parted with us on the crossing of the road, let us go forward to our destination of equality and democracy. Not only by the force of our numbers but by the truth of our stand we shall prevail.
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FINANCIAL  
STATEMENT

ANNEXURE "A"  
(DEFIANCE)

ANNEXURE "A.I."

REPORT ON THE SPECIAL MEETING OF THE NATIONAL EXECUTIVE OF THE AFRICAN NATIONAL CONGRESS HELD IN BLOEMFONTEIN ON SUNDAY, 27TH APRIL, 1952.

The recommendations of the Joint Planning Council were tabled before the Special Meeting of the Executive Committee of the AFRICAN NATIONAL CONGRESS held in Bloemfontein on Sunday the 27th of April, 1952, in terms of the Plan of Action adopted at the last Annual Conference of the A.N.C. The Committee re-affirmed the following principles as the basis of the forthcoming campaign for the DEFIANCE OF THE UNJUST LAWS:-

1. The Executive Committee of the A.N.C. shall be responsible for the laying down of policy in so far as the Campaign affects the African people.
2. The A.N.C. shall be responsible for its share of the financial commitments of the forthcoming Campaign.
3. An A.N.C. National Volunteer Council was established, such Council to be fully responsible for the tactical aspect of the Campaign.
4. The recommendations of the Joint Planning Council were adopted subject to the principles enunciated above and the Working Committee of the A.N.C. was instructed to work out a plan to co-ordinate the activities of the A.N.C. and the SOUTH AFRICAN INDIAN CONGRESS.
5. In response to this directive the Working Committee met on Friday the 2nd day of May, 1952, and resolved to:-
  - (i) set up a Committee of seven (7) members composed of representatives of the A.N.C. and S.A.I.C. to prosecute jointly the Plan of Action.
  - (ii) to set up a National Volunteer Corps (Co-ordinating) Council of six (6) members composed of three (3) representatives from each Organisation. Such Council to be responsible for the tactical aspect of the Joint Plan of Action.
6. The Executive Committee further decided that a Joint meeting of the National Executive Committees of the A.N.C. and S.A.I.C. be held in Port Elizabeth on Sunday the 31st day of May, 1952. It was decided not to invite the representatives of the FRANCHISE ACTION COUNCIL on the ground that the said Council is not as yet a National Organisation.
7. The actual date for the launching of the campaign was fixed and conveyed to the President of the S.A.I.C.
8. A call was made by the National President for 10,000 volunteers by June 26th.

ANNEXURE "A. 2."

REPORT MADE TO THE EXECUTIVE COMMITTEE OF THE SOUTH AFRICAN INDIAN  
CONGRESS IN TERMS OF THE RESOLUTION OF THE 20TH CONFERENCE OF THE CONGRESS

Having received and considered a precise and detailed plan of action, submitted by the officials in pursuance of the resolution of the Conference, this Executive Committee of the South African Indian Congress adopts the recommendations of the Joint Planning Council of the A.N.C. and S.A.I.C., subject to the following principles and alterations, provided that an agreement is arrived at between the African National Congress and the South African Indian Congress at a joint meeting of their executive committees:-

- (a) the prosecution of the struggle insofar as the Indian people of South Africa are concerned shall be subject to the policy laid down by the S.A.I.C;
- (b) that the Action Committee, which will control, direct and prosecute the plan of Action, jointly with the A.N.C. shall be composed of seven members, of which three at least shall be the representatives of the S.A.I.C., who shall have the power:-
  - (i) to nominate their own successors,
  - (ii) to control and expend the funds raised by the S.A.I.C. specifically for the purpose of the struggle, and
  - (iii) to represent and act on behalf of the S.A.I.C. Executive in all matters appertaining to the struggle;
- (c) that a co-ordinating Council consisting of six members equally representative of the S.A.I.C. and A.N.C. shall supervise, guide, control, train and organise the national volunteer corps and of whom the National Volunteer-in-Chief and the Deputy National Volunteer-in-Chief shall be the members and who shall act as the Liason Officers between the Action Committee and the Co-ordinating Council;
- (d) as and when a national organisation of the Coloured people is prepared to join and participate in the struggle the Action Committee shall have the power to include Coloured representative/s both in the Action Committee and the co-ordinating Council, provided, however, that the Provincial Congresses of the S.A.I.C. and A.N.C. shall have the right to join with the provincial organisations of the Coloured people in the implementation and prosecution of the joint plan of action.
- (e) that the suggestion of holding of the joint meeting of the national executives of the S.A.I.C. and A.N.C. at Port Elizabeth on 31st May, 1952 be accepted;
- (f) that the next meeting of the Executive Committee of the S.A.I.C. be convened at Port Elizabeth on the 31st of May, 1952 and,
- (g) supports the call of the President-General of the A.N.C. for 10,000 volunteers by June, 26th 1952.

STATEMENT ISSUED BY THE JOINT MEETING OF THE EXECUTIVE COMMITTEES  
OF THE AFRICAN NATIONAL CONGRESS AND THE SOUTH AFRICAN INDIAN  
CONGRESS HELD AT PORT ELIZABETH ON SATURDAY, 31ST MAY, 1952.

This meeting of the Executive Committees of the AFRICAN NATIONAL CONGRESS and the SOUTH AFRICAN INDIAN CONGRESS has carefully considered the grave and far-reaching implications of the notices served on leaders by the Minister of Justice Mr. C.R. Swart, in terms of the Suppression of Communism Act, requiring them to resign from the National Organisations, restraining them from attending or addressing meetings and imposing severe restrictions on their freedom of movement.

It is now common knowledge that since they came into power, the Nationalist Government have unleashed a fierce and unprecedented onslaught on the meagre civil liberties of our people, completely overturning the principles of democracy and thereby inflicting further injury to the good name, honour and reputation of our country. In examining this situation, the Joint Executives took account of the vital lessons of history in which many communities have been vanquished and decimated because they could not be roused in time to halt the floods of destruction that ultimately engulfed them and their way of life. This undemocratic action of the Minister has precipitated a major crisis in the S.A. political scene. Either we capitulate and submit ourselves and our children to a further spate of draconian legislation, untold suffering and perpetual servitude which has been our lot for many generations under the policy of white dominance, or we fight with the utmost determination to stop this onslaught.

The Minister's despotic decree seeks to destroy the democratically elected leadership of the organisations and undermines the fundamental right of free association and organisation. We stress that it is the sole prerogative of our organisations to decide who should be their members and leaders and nobody has the right to usurp this function. A situation has now arisen which leaves us with no alternative but to call upon our people to rise in their united millions and halt this racial arrogance and tide of fascism that is sweeping S.A. today.

We wish to declare our solemn belief in the principles of the Universal Declaration of Human Rights envisaging a world in which human beings shall enjoy freedom of speech, freedom of movement and freedom from fear and want, proclaimed as the highest aspiration of common people the world over. The Minister's order undermines this fundamental principle.

The second stage of the campaign for the DEFIANCE OF THE UNJUST LAWS after the country-wide protest of APRIL SIXTH now begins. DR. YUSUF MAHOMED DADOO, President of the SOUTH AFRICAN INDIAN CONGRESS, MR. MOSES MAUANE KOTANE, member of the National Executive of the AFRICAN NATIONAL CONGRESS, MR. JOHN JOSEPH MARKS, Member of the National Executive and President of the A.N.C. (Tvl.) and MR. DAVID WILLCOX BOPAPE, Secretary of the A.N.C. (Tvl.) AND MR. JOHNSON NKOHLISO NGWEVELA, Chairman of the Cape Regional Committee all of whom have been served with notices, have volunteered to defy forthwith the Minister's ban. We welcome and accept as the vanguard of the volunteers in our campaign for THE DEFIANCE OF THE UNJUST LAWS.

The next phase in which volunteers will be called upon to participate in the campaign begins on 26th June, 1952.

It is fitting that at this dark hour in the history of S.A., our National Organisations, fully conscious of their responsibilities and jealous of their honour, should come together and forge this imperishable iron-brotherhood between our people and together sound this clarion call to the people of our country to rally to the defence of our civil liberties, freedom and democracy.

We sound this call in the firm knowledge that we are enunciating and defending principles which are cherished by an overwhelming majority of the citizens of S.A. and which form the foundation of the culture and traditions of many countries all over the world.

A grim period of hard work, self-denial and trial stretches out before us. The times are momentous and so will be the individual sacrifices we shall be called upon to make. In a period of shocking lawlessness and tyranny on the part of the Nationalist Government the heaviest burden will be borne by the A.N.C. and the S.A.I.C. The inner citadel of our strength and the foundations for a free South Africa lie along the part of a well-disciplined and non-violent struggle for the removal of THE UNJUST LAWS.

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W.M. SISULU

Secretary General of the A.N.C.

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Yusuf CACHALIA

Secretary of the S.A.I.C.

Port Elizabeth.  
31st May, 1952.

IN THE SUPREME COURT OF SOUTH AFRICA  
(APPELLATE DIVISION)

In the matter between:

JOHNSON NGWEVELA

APPELLANT

&

R E G I N A

RESPONDENT

CORAM : - Centlivres C.J., Greenberg, Schreiner, Hoexter  
J.J.A. et de Beer A.J.A.

Heard : - 9th November 1953. Delivered : - 26. 11. 53.

JUDGEMENT

CENTLIVRES C.J. : On May 12th, 1952 the following notice  
was served on the appellant :-

"THE SUPPRESSION OF COMMUNISM ACT NO. 44 OF 1950  
AS AMENDED

WHEREAS YOUR NAME APPEARS ON THE LIST IN THE CUSTODY OF  
THE OFFICER REFERRED TO IN SECTION EIGHT,  
PLEASE TAKE NOTICE THAT :

1. UNDER THE POWERS VESTED IN ME BY SECTION 5 OF THE SUPPRESSION  
OF COMMUNISM ACT, (ACT NO. 44 OF 1950 AS AMENDED), YOU ARE  
HEREBY REQUESTED :

- (a) to resign within a period of 30 days from date here-  
of as an office-bearer, officer or member of the  
following organisations and not again to become an  
office-bearer, officer or member thereof and not to  
take part in their activities:

FRANCHISE ACTION COUNCIL  
CAPE TOWN PEACE COUNCIL

- (b) not to become an office-bearer, officer or member  
and not to take part in the activities of the organ-  
isation called

AFRICAN NATIONAL CONGRESS

2. Under the powers vested in me by section 9 of the Suppres-  
sion of Communism Act, (Act No. 44 of 1950 as amended), you  
are hereby prohibited from attending any gathering whatever  
within the Union of South Africa and the Territory of South-  
West Africa for a period of two years from date hereof other  
than gatherings of a bona fide religious, recreational or  
social nature.

3. Under the powers vested in me by section 10 of the Act and after thirty days from date hereof you are hereby prohibited for a period of two years from being within any province in the Union of South Africa, or the Territory of South-West Africa, other than the province of the Cape of Good Hope.

Given under my hand at CAPE TOWN this 28th day of APRIL, 1952.

(sgd) C. R. SWART

MINISTER OF JUSTICE. "

Paragraph 3 of the above notice was withdrawn by a notice issued by the Minister on June 30th, 1952. The reason for the withdrawal was apparently due to the fact that Section 17 of the Act had not been complied with.

Appellant was convicted in a magistrate's court of contravening Sec. 11(h) read with Sec. 9 of Act 44 of 1950, as amended, in that he, in contravention of the above notice, attended, on June 23rd, 1952, a gathering which was not of a bona fide religious, recreational or social nature. He appealed unsuccessfully to the Cape Provincial Division which granted him leave to appeal to this Court.

The conviction of the appellant was attacked on two grounds. The first ground was that the notice was invalid in that the Minister, before exercising his powers under Sec. 9 of the Act, had (as was admitted by the Crown) failed to give the appellant an opportunity of defending himself. The second ground was that the preamble to the notice governed both paragraphs 1 and 2 and that it must therefore be taken that the only reason why the Minister caused the notice under Sec. 9 to be served on the appellant was because his name was on the list referred to in the preamble. This reason it was contended was not justified by Sec. 9.

I shall now deal with the first of the grounds mentioned above. Section 9 of the Act is as follows :-

- " 9. Whenever in the opinion of the Minister there is reason to believe that the achievement of any of the objects of communism would be furthered -
- (a) by the assembly of a particular gathering in any place;
  - or
  - (b) if a particular person were to attend any gathering in any place,
- the Minister may, in the manner provided in subsection (1) of section one of the Riotous Assemblies and Criminal Law Amendment Act, 1914 (Act No. 27 of 1914), prohibit the assembly of that gathering in any place within the Union, or he may by notice under his hand addressed and delivered or tendered to that particular person, prohibit him from attending any gathering in any place within an area and during a period specified in such notice."

Section 9 of the Act necessarily implies that in order to form the opinion requisite for action under the section the Minister must have in his possession information enabling him to form that opinion. Mr. Molteni, who appeared for the appellant, relying on a number of decided cases, contended that, in the absence of an expressed or implied statutory provision to the contrary, there was a duty resting on the Minister before arriving at his opinion, to make some enquiry which involves notification to the person likely to be prejudicially affected by the proposal to take action against him,



and an opportunity to defend himself and to controvert any information upon which the Minister proposes to act. In effect counsel relied on the well-known and frequently invoked maxim audi alteram partem. In Sachs v Minister of Justice (1934 A.D. 11 at p. 38) Stratford A.C.J. said :-

" Sacred though the maxim is held to be, Parliament is free to violate it. In all cases where by judicial interpretation it has been invoked, this has been justified on the ground that the enactment impliedly incorporated it. When on the true interpretation of the Act, the implication is excluded, there is an end of the matter".

In referring to the implied incorporation of the maxim Stratford A.C.J. must have had in mind the numerous judicial decisions in which it has been held that, when a statute empowers a public official to give a decision prejudicially affecting the property or liberty of an individual, that individual has a right to be heard before action is taken against him, (cf. the remarks of Tindall J.S. in the Court below reported at p. 22) unless the statute expressly or by necessary implication indicates the contrary.

In Sachs' case (supra) - at pp. 22/24 -- Tindall J held that the Minister is not bound to give a person against whom he proposes to issue a prohibition under Sec. 1 (12) of Act 27 of 1914 an opportunity of defending himself. The only ground of the decision of the Provincial Division in that case was that it was clear from the provisions of sub-sections (12) and (13) of Sec. 1 of the Act that the legislature did not intend that the person affected should have an opportunity of being heard before the Minister issued a notice under sub-section (12); but after the order had been made the Minister was bound under sub-section (13) to consider any representations which the person wished to make. On appeal the ratio decidendi of Tindall J. was approved. (see p. 38). This ratio decidendi is of no application to the present appeal, for there is no provision in Act 44 of 1950 which corresponds to Sec. 1 (13) of Act 27 of 1914.

This Court, however, supported the decision of the Provincial Division on an additional ground. On p. 36 Stratford A.C.J. said :-

" Mr. Murray, I think, is correct in saying that its (i.e. the Act's) provisions constitute a measure of 'preventive justice' - that is to say they are not directed towards punishment for offences committed but towards 'restraining a man from committing a crime he may commit but has not yet committed, or doing some act injurious to members of the community which he may do but has not yet done.' (per Lord Atkinson in Rex v Halliday (1917 A.C. at p. 273). There is no doubt the Act gives the Minister a discretion of a wide and drastic kind and one which, in its exercise, must necessarily make a serious in-road upon the ordinary liberty of the subject. Its object is clear, it is to stop at the earliest possible stage the fomentation of feelings of hostility between the European and Non-European sections of the community. Prompt and unfettered action is manifestly necessary for that purpose, and Parliament has thought fit to confer upon the Minister the power to act in the public interest so soon as he is satisfied that certain conditions exist. Bearing in mind the kind of situation and the nature of the apprehended danger, which the Legislature clearly has in contemplation, it will readily be seen that if the Minister's discretion is hampered by the obligation to submit his decision to approval

of a Court of Law, the delay involved would defeat the whole object of the particular provision we are discussing."

On p. 38 Stratford A.C.J. said :-

" Now, however desirable it may be from the wide point of view of what is called natural justice, to hold an enquiry before issuing the notice under the section " (i.e. Sec. 1(12) of Act 27 of 1914) "the implication in this Act is clearly against it. Not only would such an enquiry defeat the cardinal purpose of prompt and preventive action but sub-sec. (13) could not then be given a sensible meaning."

There are one or two observations which I wish to make in connection with the above passage from the judgement of Stratford A.C.J. In the first passage the learned Acting Chief Justice refers to the delay which would be occasioned if the Minister were obliged "to submit his decision to approval of a Court of law." I do not think that the learned judge intended to lay down that when a person is entitled to invoke the maxim audi alteram partem he has the right to ask that a court of law should decide the matter, for on p. 38 he said that Tindall J. dealt satisfactorily and conclusively with the argument of the appellant. This is what Tindall J. said on p. 22:-

" ... the person or body giving the decision is not bound to hear the person affected orally, but is only bound to give him a fair opportunity of submitting any statements in his favour and of controverting any prejudicial allegations made against him."

The exercise of the right to demand an opportunity to be heard does not therefore entail recourse to a court of law nor does it entail an enquiry at which witnesses are heard orally.

In the second passage which I have quoted the learned Acting Chief Justice, when he used the words "holds an enquiry" could not, for the reason which I have already given, have intended to lay down that the person who is entitled to invoke the maxim audi alteram partem is entitled to demand an enquiry at which witnesses are heard viva voce. In this passage the learned judge was answering the contention of the appellant which was (see p. 29) that the Minister must hold some form of enquiry before acting under sub-sec. (12). When one speaks of some form of enquiry one often envisages proceedings at which a matter in dispute is enquired into - proceedings at which witnesses are called and examined. Such an enquiry may well, by the delay which it entails, defeat the object which the Legislature had in mind.

In any event the remarks of the learned Acting Chief Justice both in the first and second passages as to the delay that might have been occasioned if the maxim audi alteram partem had been applicable must be read in conjunction with his view as to the reason why the Legislature inserted the provisions of sub. sec. (13) into Sec. 1 of Act 27 of 1914, for he took the view that a sensible meaning could not be given to that sub-sec. if the Minister was bound to give the person likely to be affected an opportunity of being heard before action was taken under sub-sec. (12). In other words there was a necessary implication from the provisions of sub sec. (13) that a person likely to be affected by a notice issued under sub-sec. (12) was not entitled to delay the issue of such a notice by invoking the maxim audi alteram partem. Delay is a matter of degree and it is questionable whether in the circumstances of the legislation I am now

considering a delay of a few days which would be entailed by giving the person likely to be affected an opportunity of defending himself can be said to defeat the object which the Legislature had in mind when it passed Act 44 of 1950. I shall return to this aspect of the matter later.

Tindall A.C.J. in Minister of the Interior v Bechler and Others (1948 (3) S.A. 409 at pp. 451 & 452) gave a clear exposition of the legal principles which apply in a case such as this. He said that if the enquiry of a certain Commission

" had been of the same kind as the one held in pursuance of a power entrusted to a Ministerial or administrative authority to give a decision affecting rights of or involving legal consequences to persons, it would follow, having regard to principles frequently enunciated in our courts, that generally speaking a person liable to be affected by such decision ought to be informed of the substance of the prejudicial allegations against him; for otherwise it could not be said that he had a sufficient opportunity of controverting such allegations. Compare Sachs v Minister of Justice (1934 A.D. 11 at p. 22, 38) and Loxton v Kenhardt Liquor Licensing Board (1942 A.D. 276 at p. 315) And I must not be taken to assent to the doctrine that, in a case where those principles apply, the hearing can be said to have been a fair one although the substance of the prejudicial allegations has not been disclosed. Exceptions may have to be made in very special circumstances, e.g. in the case of an emergency such as is referred to in De Verteuil v Knaggs (1918 A.C. 557) or possibly in a case where the disclosure of the information might result in the disclosure of its source and the disclosure of the source would be in conflict with public policy or detrimental to the public interest. In such cases the proper way of putting it would be that, very exceptionally, the requirements of natural justice might be departed from, not that a weaker brand of fairness would still be legitimately describable as natural justice."

I do not read the remarks of Tindall A.C.J. as meaning that where the refusal to disclose information to a person likely to be affected is justified on grounds of public policy that person is not entitled to be given an opportunity of stating his case before action is taken against him. In the hypothetical case I am now considering he would not have in his possession the information on which the public official proposes to act but he might be able to satisfy that official that action should not be taken against him.

I shall now proceed to consider whether Act 44 of 1950 deprives the appellant of the right to invoke the maxim audi alteram partem. First of all I shall consider Section 9. That section empowers the Minister to prevent in circumstances set forth in the section -

- (1) the assembly of a particular gathering in any place,

or

- (2) a particular person from attending any gathering in any place during a period fixed by him.

It was contended on behalf of the Crown that the maxim would have no application when the Minister prohibits the assembly of a particular gathering. I shall assume that

the contention is sound. The next step in the Crown's argument was that, this being so, it follows that the Legislature intended that the maxim should not apply to any action whatsoever taken by the Minister under the section and that the appellant therefore had no right to be heard before he was served with a notice under the section. There is, I think, a fallacy in this argument. The mere fact that the draftsman of the section drafted, for the sake of brevity, one section instead of two sections cannot affect a principle of law which the courts have consistently applied. There is nothing in the section which expressly deprives a person likely to be affected by the Minister's action from being heard nor can I find anything in the section which by necessary implication deprives him of that right.

But I must travel further afield and enquire whether the Act read as a whole drives one to the conclusion that the Legislature intended that the maxim should not apply in respect of any action taken by the Minister under Sec. 9.

Sub-section (10) of Sec. 4 is as follows :-

" (10) If directed by the Minister to do so, the liquidator shall compile a list of persons who are or have at any time before or after the commencement of this Act been office-bearers, officers, members or active supporters of the organisation which has been declared an unlawful organisation: Provided that the name of the person shall not be included in any such list or in any category mentioned in such list, unless he has been afforded a reasonable opportunity of showing that his name should not be included therein. "

Sub-section (2) of Section 7 is similar to Sub-section (10) of Section 4 and contains an identical proviso. There are thus two provisions in the Act which expressly give a person likely to be affected the right to be heard before he is placed on the lists referred to. It will be noted that once the Minister has directed the officer to compile the list, that officer is obliged to put on the list the names of everyone who at any time before or after the commencement of the Act were office-bearers, etc. of the organisation referred to. A person whose name has been placed on the list may have severed his connection with or withdrawn his support from that organisation long before the Act came into operation and may now be a staunch opponent of communism. Consequently the mere fact that the name of a particular person is on the list does not entitle the Minister to issue an order against him under Sec. 9. In the absence of anything to the contrary in the Act the mere fact that he was given an opportunity to be heard under Sec. 4 (10) or 7(2) does not deprive him of the right to demand a hearing under Sec. 9 which is different from Sec. 5 which empowers the Minister without having to arrive at any opinion to issue certain orders against "any person whose name appears on any list in the custody of the officer referred to in Sec. eight."

Another section to which reference was made during the course of the argument is Sec. 17 which, in short, requires "a factual report" to be made by a committee, inter alia, before the Minister can take any steps against a person under Sec. 10, which empowers the Minister in the circumstances therein specified to prohibit a person from being within a specified area during a specified period. Sec. 17 is not of any assistance to the enquiry on which I am now engaged because it does not expressly give a person who is likely to be

affected by the action of the Minister the right of audience before the Committee.

The Crown in invoking the maxim expressio unius est exclusio alterius contended, that as other sections of the Act gave the person affected a right of hearing and as Sec. 9 did not, it follows that such a person has no such right under Sec. 9. It has frequently been laid down in this Court that the maxim must be applied with caution.

In Poynton v Cran (1910 A.D. at p. 222), Chotabhai v Union Government (1911 A.D. 13 at p. 28), Rex v Vlotman (1912 A.D. 136 at p. 141), and Grobler v Trustee Est. de Beer (1915 A.D. 265 at p. 275) this Court refused to apply the maxim; in S.A. Estates and Finance Company v Commissioner for Inland Revenue (1927 A.D. 230 at p. 236) and in Papa v Perumal (1937 A.D. 200 at p. 208) the Court applied the maxim. In this connection it must also be borne in mind that saving clauses are often inserted by the Legislature in order to quiet fears. See Rex v Abel (1948 (1) S.A. 654 at p. 662). But in any event I find it impossible to apply the maxim in the present case for there are two other sections viz: Secs. 2(2) and 6 which say that the Governor-General may take certain action "without notice to the organisation concerned" and "without notice to any person concerned" respectively. As similar words do not appear in Sec. 9 it might equally well be argued on the maxim relied on by the Crown that a person liable to be affected by an order under that section is entitled to have notice that the Minister proposes to issue such order.

The next question is whether, to use the language of Stratford A.C.J. in Sachs' case (supra) at p. 38, the granting of an opportunity to a person liable to be affected by a notice under Sec. 9 would "defeat the cardinal purpose of prompt and preventive action". If that cardinal purpose would be defeated then it must be held that Parliament has sanctioned a departure from the maxim audi alteram partem. I have already stated that it is questionable whether a delay of the few days which would be entailed by giving the person affected an opportunity of defending himself can be said to defeat the object which the Legislature had in mind. If during such delay the person in question advocated, advised, defended or encouraged the achievement of any of the objects of communism he would, under Sec. 11 (b) read with Sec. 11(i), be guilty of an offence and liable to imprisonment for a period not exceeding ten years. The liability to so heavy a penalty, it seems to me, will act as a powerful deterrent in inducing persons not to do anything which is calculated to defeat the object which the Legislature had in mind when it passed Act 44 of 1950. This being the position, I do not think that it can legitimately be said that to give a person likely to be affected by a notice issued under Sec. 9 an opportunity of being heard will entail such a delay as to defeat "the cardinal purpose of prompt and preventive action."

I may point out that this is not a case where the Minister has issued an order prohibiting a particular person from attending a particular gathering. Such an order might sometimes be given in circumstances so urgent as to justify a non-observance of the maxim. But in this case the notice is of a general character and operates for a period of two years.

I have not overlooked the statement made by Lord Parnoor in De Verteuil v Knaggs (1918 A.C. 557 at pp. 560/1) to the effect that there may be special circumstances which would justify a public official, acting in good faith, to take

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**TREASON TRIAL, 1956 1961**

***PUBLISHER:***

*Publisher:- Historical Papers, University of the Witwatersrand*

*Location:- Johannesburg*

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